IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 12 OF 2006

Shri Lavchandra Venctexa
Alve(deceased), Aged about
66, married, landlord,
R/o Dattaprasad Bldg.
Comba Margao-Goa,
Through his legal heirs:

1a. Shri Dattaprasad Alve,
r/o Dattaprasad Bldg.,
Comba Margao.

1b. Smt. Mandakini L. Alve,
Widow, r/o Comba Margao.

1c. Smt. Sheela Alias Archana
Shetye and her husband,

1d. Shri Sharadkumar Shetye,
both r/o Shantinagar Ponda.

1e. Smt. Sunita Tandel, widow,
r/o Abade Faria Road, Margao.

1f. Smt. Nayana alias Shital Bhise,
and her husband.

1g. Ramchandra Bhise, Mazagaon,
both r/o Katwada, Sawantwadi,

1h. Smt. Shubhangui Natekar and
her husband,

1i. Shri Sanjay Natekar,
both r/o Curchorem.

1j. Smt. Seema Kamat, and her
husband,

1k. Shri Vallab Kamat,
r/o Volvoi Marcela, Goa.
Duly represented by their
power of Attorney holder,
Smt.Sunita Tandel,
R/o Abade Faria Road,
Margao-Goa. ... Appellants

versus

1. Dr. Damodar Digambar
Alve(deceased) aged about
55, medical practitioner,
married,

Legal Representatives of Defendant No.1.

1a.Smt. Mahananda Damodar
Alve ... Widow

1b. Shri Dinar Damodar
Alve, ... son

1c. Smt. Anuja Dinar Alve ... Daughter in law

1d. Shri Darshan Damodar Alve ... Son

1e. Smt. Meena Darshan Alve ... Daughter in law

1f. Smt. Dalia Ajit Verenkar ... Daughter

1g. Shri Ajit Verenkar ... Son in law

L.Rs. 1(a) to 1(e) are
residents of Comba Margao.

L.Rs.1(f) and 1(g) are r/o
State Bank Colony, near
old survey Office, Borda
Margao

2. Shri Deepak Digambar
Alve, aged about 46,
Landlord, both r/o Comba
Margao Goa. ... Respondents

Mr. P. P. Singh, Advocate for the Appellants.

CORAM : N. A. BRITTO, J.

DATE : 7TH JUNE, 2006.

ORAL ORDER

Heard Mr. P. P. Singh, the learned Counsel on behalf of the appellants.

2. This is plaintiff's second appeal. The plaintiff's suit for correction of survey records and for permanent injunction came to be dismissed by the trial Court by Judgment dated 30-4-2001. The plaintiff filed an appeal against the same, being R.C.A.No.51/2002 and the same also came to be dismissed by Judgment dated 17-8-2005.

3. The dispute between the parties is regarding 1500 sq. meters which admittedly are recorded in survey no.98/6 in the

name of the defendants. The plaintiff claims the same as part of his property surveyed under no.98/4. There is no dispute that the plaintiffs and the defendants had 1/3rd share each in the property known as "Benamola" situated in village Deao of Quepem Taluka. There is also no dispute that Glebas/divisions "C" and "F" of the said property belong to the plaintiffs while Glebas/divisions "B" and "E" belong to the defendants. Presumably Glebas "C" and "F" came to be surveyed under no.98/4 while Glebas "B" and "E" came to be surveyed under no.98/6, although learned Counsel Mr. Singh has not been able to make a categorical statement in that regard. The plaintiff sold a part of survey no.98/4, namely plot "D" by Sale Deed dated 22-8-1985 to one Thomas Jacob. It is submitted by Mr. Singh, the learned Counsel on behalf of the plaintiff, that only a part of survey no.98/4 was sold to the said Thomas Jacob though the Judgments of the Courts below show otherwise. The defendants by a Sale Deed dated 19-2-1991 sold a part of his survey no.98/6 to Smt. Augusta Fernandes retaining an area of about 1500 sq. meters. The plaintiff perceives this area as belonging to him. The plaintiff thereafter filed the suit on or about 2-8-1993 claiming the said area of 1500 sq. meters of

survey no.98/6, presumably which was retained by the defendants from being sold.

4. Both the Courts below, on analysis of evidence produced by the parties have come to the conclusion that the plaintiff has failed to prove that 1500 sq. meters of survey no.98/6 is part of the property of the plaintiff surveyed under no.98/4. The first appellate Court has observed that the burden was on the plaintiff to prove that he was the owner of the western portion of 1500 sq. meters of survey no.98/6 and that this could have been proved only in case the plaintiff had examined an expert to show that Gleba "C" corresponded to survey no.98/4 and 1500 sq. meters of survey no.98/6 and although the plaintiff had filed along with the plaint a plan prepared by Engineer Bhende, Engineer Bhende was not examined to support the said plan and, therefore, the said plan had remained without being proved by the plaintiff. As per Mr. Singh, the learned Counsel on behalf of the plaintiff that is the only reason why the appellate Court has come to the conclusion that the plaintiff has failed to prove that 1500 sq. meters form part of Gleba "C" claimed by the plaintiff surveyed

under no.98/4. This submission does not appear to be correct. The learned first appellate Court has also taken note of the Sale Deed dated 22-8-1985 by which the plaintiff had sold the plot "D" of survey no.98/4 to the said Thomas Jacob and has noted that the Sale Deed did not show the eastern boundary of plot "D" as the remaining property of the plaintiff. This is recorded in para 33 of the Judgment of the learned first appellate Court. Both the Courts below on the analysis of evidence produced by the parties have come to the conclusion that the plaintiff has failed to prove that he is the owner of the western area admeasuring 1500 sq. meters of survey no.98/6. This is a concurrent finding of fact rendered by both the Courts below and, therefore, cannot be a subject matter of a second appeal. I have perused the substantial questions of law formulated by the plaintiff in the memorandum of appeal and in my view, none of the said questions formulated deserved to be considered as substantial questions of law as explained by the Apex Court in the case of **Santosh Hazari** v. **Purshottam Tiwari**((2001) 3 SCC 179) which decision has been lastly followed by the Supreme Court in the case of **Gurudev Kaur and others** v. **Kaki and others**(2006 AIR SCW 2406). The Supreme Court in the last

Judgment has observed that an unqualified right of first appeal may be necessary for the satisfaction of the defeated litigant; but a wide right of second appeal is more in the nature of luxury. In my view, both the Courts below have given a concurrent finding of fact, based on analysis of evidence produced, that the area claimed by the plaintiff of 1500 sq. meters, admittedly surveyed under no.98/6 does not belong to the plaintiff so as to form part of survey no.98/4. Consequently, I find there is no merit in this second appeal and the same is hereby dismissed in limine.

N. A. BRITTO, J.

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